

April 8, 1996

FOR: The Commissioners
 FROM: James M. Taylor /s/
 Executive Director for Operations
 SUBJECT: ORGANIZATION OF AGREEMENT STATES' REQUEST FOR NRC SUPPORT FOR CONFERENCE OF RADIATION CONTROL PROGRAM DIRECTORS, INC. RESOLUTION

- PURPOSE:
- BACKGROUND:
- DISCUSSION:
- RECOMMENDATION:
- COORDINATION:

PURPOSE:

To request Commission approval of the staff's recommendation that a formal response from the Chairman is no longer required relative to an earlier request from the Organization of Agreement States (OAS) for NRC support of a Conference of Radiation Control Program Directors, Inc. (CRCPD) resolution regarding location of a State radiation control program within a single agency.

BACKGROUND:

By letter dated April 13, 1995 ([Attachment 1](#)), seven motions passed by the OAS during the April 5-6, 1995, OAS Managers' Meeting were forwarded to NRC. The seventh motion, which is the subject of this paper, was enclosed separately and subscribes to a CRCPD resolution, which was passed at the CRCPD's 1994 Annual Meeting. The OAS Chair requests that NRC support a "unified entity radiation control program (RCP)," to the extent allowed by law, and to show its support in a letter signed by the highest possible agency official.

The OAS motion resulted from discussions during the Managers' Meeting where concern was expressed by several Agreement States about reorganization efforts that were underway within their respective Departments. In some cases, these reorganizations would result in the decentralization of radiation safety regulatory responsibilities and personnel changes. During the Managers' Meeting, former Chairman Selin was requested to provide a written NRC position that would indicate NRC supports RCPs consolidated into one organizational unit over decentralized programs. In response, former Chairman Selin suggested that OAS document their position on this issue, provide it to the NRC in writing, and allow NRC the opportunity to review the OAS position and consider it for endorsement.

DISCUSSION:

The CRCPD resolution⁽¹⁾ makes a number of statements in support of a consolidated single entity RCP, as a preferable alternative to a non-consolidated RCP that would be located in different agencies of State government. The resolution states that, due to the advancing state of technology and associated need for a complex and highly technical combination of people and monitoring equipment, a single RCP would not only provide access to a cadre of highly trained personnel in the areas of emergency response and radiological health and safety, but would also be more economical and efficient. The resolution also indicates that consolidation results in a comprehensive and consistent program by decreasing the possibility for duplication and contradiction of multi-agency efforts in the area of adoption and enforcement of regulations.

The staff has recognized the benefits identified in the CRCPD resolution, but has generally taken the position that as long as the State RCP meets NRC criteria and guidelines, the organizational structure of an Agreement State RCP is the responsibility of the State and should be left to the discretion of State authorities. The staff continues to believe that an Agreement State program that is adequate to protect public health and safety and is compatible with the program of the NRC can be achieved with either a consolidated or a decentralized RCP.

There is no requirement for a centralized RCP in the Atomic Energy Act or NRC regulations. The NRC Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," only addresses the issue in passing (46 FR 7540). It indicates that ". . . it may be desirable that there be a single or central regulatory authority." The partially suspended NRC Policy Statement, ⁽²⁾ "Guidelines for NRC Review of Agreement States Radiation Control Programs," formerly used in the reviews of Agreement State RCPs for adequacy and compatibility, did not address the issue (57 FR 22495). The NRC Guidelines for the indicator, "Internal Organization of the RCP," stated only that:

"The RCP should be organized with the view of achieving an acceptable degree of staff efficiency, place appropriate emphasis on major program functions, and provide specific lines of supervision from program management for the execution of program policy."

"Where regional offices or other government agencies are utilized, the lines of communication and administrative control between these offices and the central office (Program Director) should be clearly drawn to provide uniformity in licensing and inspection policies, procedures, and supervision."

In addition, NRC has recognized that the Agreement States of Nebraska, New York, South Carolina, and Texas have existing successful RCPs with responsibilities split among two or more agencies. NRC has not opposed these decentralized programs and has not identified adequacy and compatibility concerns during program reviews that result from decentralized organizational RCP responsibilities. Staff notes, however, that the level of NRC resources required to interact with more than one regulatory agency within an Agreement State program are generally higher than what would be required to interact with a single agency within that State. The staff has no data to quantify the difference, but believes it is not significant in most cases.

Finally, the focus of Agreement State program reviews under IMPEP is on performance and the overall effectiveness of the RCPs ability to adequately protect the public health and safety and to maintain a compatible program rather than focusing on program details such as organizational structure.

Given the above, the staff acknowledges the following viewpoints, which have been discussed with the OAS

Executive Committee Chair: 1) Experience has indicated that a single RCP can maintain an adequate and compatible Agreement State program and may increase RCP efficiencies, when compared to multi-agency programs; therefore, the value of a single State RCP is recognized; 2) States have, however, also shown that successful RCPs can be located and operated in non-consolidated State agencies, without compromising the public health and safety; therefore a non-consolidated State RCP is not opposed; and 3) The organizational structure of an Agreement State RCP is solely the responsibility of the State, as long as it does not threaten the adequacy and compatibility of the Agreement State program.

The staff also notes the CRCPD forwarded a copy of their resolution to the Presidents of the Association of State and Territorial Health Officers (ASTHO), the American Public Health Association (APHA), the American Industrial Hygiene Association (AIHA), the Health Physics Society (HPS), the Air and Waste Management Association (AWMA), the Council of State Governments (CSG), the National Governors' Association (NGA), and the National Conference of State Legislatures (NCSL), requesting these organizations to consider adopting similar positions relating to single unified programs for radiation protection. The CRCPD has not, to date, been notified by any of these organizations of their intention to adopt similar positions relating to single unified programs for radiation protection.

RECOMMENDATION:

The staff recommends that the Chairman not respond formally to the OAS request, since recent discussion with the OAS Executive Committee Chair indicates the OAS would see no benefit in receiving an endorsement for a unified RCP with significant qualification. Sending a formal response that does not fully support a unified RCP would undermine the OAS position that a single entity RCP is a preferable alternative to a non-consolidated RCP that would be located in different agencies of State government.

COORDINATION:

The Office of General Counsel has no legal objection to the paper.

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Attachments: 1. Letter dated 4/13/95, to R. Bangart from R. Ratliff
2. Amended CRCPD Resolution on Consolidated RCP

1. Staff notes that the CRCPD resolution, enclosed with the OAS letter, was amended to further support a consolidated RCP and the amended resolution was approved by CRCPD membership at their May 1995 annual meeting, however, no action was taken by OAS on the amended resolution. See [Attachment 2](#).

2. The October 1, 1995, interim implementation of the Integrated Materials Performance Evaluation Program (IMPEP) under Management Directive 5.6 suspends all but the single program element of the May 28, 1992, General Statement of Policy entitled "Legislation and Regulations." The NRC will rescind the entire 1992 policy statement upon final approval and implementation of the "Statement of Principles and Policy for the Agreement State Program" and "Policy Statement on the Adequacy and Compatibility of Agreement State Programs."